



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of)

Inventor: LUNGO)

Title: PORTABLE TOOL CARRIER FOR)
STEP LADDERS)

Serial No. 10/054,448)

Examiner LUONG, S. T. T.

Filing Date: 01/18/2002)

Group Art Unit 3728

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

#10
Dr. L.
ce
Patent
E. J. Frantz
2/12/04

**DECLARATION OF PRIOR INVENTION IN THE UNITED STATES
OR IN A NAFTA OR WTO MEMBER COUNTRY
TO OVERCOME CITED PATENT OR PUBLICATION (37 C.F.R. 1.131)**

I, **Philip M. Lungo**, a citizen of the United States of America, currently residing at 5920 Park Ridge Road, Loves Park, IL 61115, make this declaration to establish completion of the Invention in the above-identified Application in the United States, on a date prior to December 11, 2000, that is the effective date of Hedges, U.S. Patent No. 6,564,941 that was cited by the examiner in the Office Action dated 07/16/2003 against claims 1-15, and in support thereof, declare as follows:

1. I am the sole inventor of the Invention in the Application.
2. Prior to July 9, 2000, I conceived of my Invention as shown, described and claimed in the Application.
3. Prior to July 9, 2000, a prototype of my Invention was made and completed under my direction. I successfully used, tested, operated and worked the prototype for its intended purpose prior to July 9, 2000 in Rockford, Illinois. This prototype is shown in photographs taken prior to July 9, 2000, true and accurate copies of which attached hereto as Exhibit A. This prototype is identical in construction and operation to the embodiment shown in FIGS. 9-19 of the present Application.
4. Prior to July 9, 2000, I disclosed my Invention to Keith Frantz, providing Attorney Frantz with the prototype, and the photographs shown in Exhibit A. A

supporting declaration from Attorney Frantz is attached hereto as Exhibit B.

5. On July 9, 2000, pursuant to my instructions to prepare a patent application, Attorney Frantz e-mailed to draftsman Charles Viola photocopies of the photographs shown in Exhibit A, markups and sketches, and a cover letter with instructions for preparation of drawings for the application. The markups and sketches were produced by Attorney Frantz from the photographs shown in Exhibit A, the prototype, and drawings prepared for an earlier design patent application (S/N 29/124,601, filed June 7, 2000) that was based on an earlier prototype, photographs of which were taken prior to May 2, 2000 and true and accurate photocopies of which are attached hereto as Exhibit C. This earlier prototype is identical in construction and operation to the embodiment shown in FIGS. 1-8 of the present Application, and includes holders shown in FIGS. 20-25 of the Application. A copy of US Design Patent D444,575 issuing from application 29/124,601 is attached hereto as Exhibit D. A redacted copy of the correspondence to Charles Viola and enclosures are attached as Exhibit E.

6. On July 19, 2000, I filed U.S. Design Patent Application S/N 29/126,648 with the drawings prepared from the sketches and photographs mailed to Charles Viola on July 9, 2000. This application matured into U.S. Design Patent No. D445,202, a copy of which is attached hereto as Exhibit F.

7. On January 18, 2001, I filed U.S. Provisional Patent Application S/N 60/262,501 to which the present Application claims priority. The specification and drawings for the provisional application were prepared per my instructions of prior to December 11, 2000, from the above-identified photographs, sketches, prototypes, and drawings. A copy of the provisional application is attached hereto as Exhibit G.

8. The documents and things identified in Paragraphs 3-5 above, and attached hereto, establish that I made and completed the Invention prior to July 9, 2000, which is a date earlier than the effective date (December 11, 2000) of the patent to Hedges.

9. From the time of my conception of the Invention, to a time up to December 11, 2000, the effective date of the Hedges patent, I undertook, among other things, the following acts which show requisite diligence from my conception of the Invention: (i) on my instructions I had the above-identified prototypes prepared, and (ii) on my instructions I had under preparation the above-identified provisional patent application.

10. This Declaration is submitted with a Request for Continued Examination in the Application.

11. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the Application and any patent issuing thereon.

Inventor: Philip M. Lungo

Inventor's Signature: Philip M. Lungo

Date: 1-15-04

Signed at: Rockford, IL

Residence: 5920 Park Ridge Road, Loves Park, IL 61115

Citizenship: United States of America

Permanent Residency: United States of America

Post office Address: same as Residence above